

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

9/30/2019

Clerk, U.S. District Court
District of Montana
Helena Division

ELLEN MARTEN, as Guardian and
Conservator of Glen Marten,

Plaintiff,

vs.

STATE OF MONTANA,

Defendant.

CV 17-31-H-CCL

ORDER

Defendant moves to compel Plaintiff to produce a copy of her settlement agreement with Dr. Justad. (Doc. 81). Plaintiff opposes Defendant's motion, arguing that the terms of the settlement agreement are confidential and are not relevant to any claims or defenses to be decided by the jury.

Defendant initially claimed that the settlement agreement was relevant to its argument that if Dr. Justad settled for over \$750,000 and the Court or the jury determined that she was a state agent, her settlement should be credited to the State and the State would have paid the State cap. That argument is foreclosed by the Court's ruling as a matter of law that Dr. Justad is an independent contractor and not an agent of the State of Montana.

Defendant alternatively argues that the terms of the settlement agreement are relevant to a potential offset, should the jury find that Dr. Justad and the State contributed to Marten's injuries.

Neither party appears to have ascertained Dr. Justad's position regarding production of her confidential settlement agreement. Although Dr. Justad is no longer a party to this case, she should have been consulted, given that production of the settlement agreement may adversely impact her right to privacy. It appears that the terms of the settlement agreement need not be disclosed until after trial. The Court has therefore determined that Dr. Justad's right to privacy outweighs Defendant's need for production of the confidential settlement agreement at this stage in the proceeding. Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Compel Production of Settlement Agreement (Doc. 81) is DENIED without prejudice. Should the jury determine that Defendant and Dr. Justad share liability for Marten's injuries, Defendant may re-file the motion.

Dated this 30th day of September, 2019.



CHARLES C. LOVELL
SENIOR UNITED STATES DISTRICT